


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
DEC 30 2008

CLERK

FRANCIS IRON HEART,

CIV 08-3024

Petitioner,

OPINION AND ORDER

-VS-

GREGORY COUNTY, SOUTH DAKOTA,

Respondent.

Petitioner is a pre-trial detainee at the Winner City Jail in Winner, South Dakota. He has filed a petition for a writ of habeas corpus seeking a federal court order suppressing evidence in his pending state court actions in Tripp and Gregory Counties charging receiving stolen property, grand theft, and burglary. He is represented by appointed counsel in his state court cases. He has also filed an application to proceed without the prepayment of fees, Doc. 5, and motions for a "4-day writ," Docs. 6 and 7.

Petitioner has made the requisite showing under 28 U.S.C. § 1915(a). Accordingly, his application to proceed without the prepayment of fees will be granted. Pursuant to 28 U.S.C. § 1915(b)(1), petitioner is nonetheless required to pay the statutory filing fee of \$5.00 for this action. *See* 28 U.S.C. § 1914(a).

Petitioner has not alleged that he is in custody pursuant to a state court judgment and, therefore, this court has no jurisdiction to enter habeas relief pursuant to 28 U.S.C. § 2254. It has long been the rule that federal courts should abstain from interfering in ongoing state criminal proceedings. *Younger v. Harris*, 401 U.S. 37, 43-45, 91 S.Ct. 746, 750-51, 27 L.Ed.2d 669 (1971). Habeas relief pursuant to 28 U.S.C. § 2241 is not appropriate.

Petitioner contends that he is entitled to a writ of habeas corpus pursuant to the Indian Civil Rights Act. That Act, codified at 25 U.S.C. § 1303, allows a person to challenge the

legality of detention by an Indian tribe. Petitioner does not allege any facts showing that he is being detained by an Indian tribe.

Petitioner contends that he is entitled to relief under the Indian Appropriations Act which, he claims, entitles him to the legal assistance of the U.S. Attorney. The Indian Appropriations Act is enacted annually. Petitioner does not refer to which year he contends the Act affords him the right to legal counsel provided by the U.S. Attorney. The Court knows of no such right.

Petitioner's motions for a so-called "4 day writ" are frivolous.

Based upon the foregoing,

IT IS ORDERED

1. Petitioner's application, Doc. 5, to proceed without the prepayment of fees is granted. Petitioner, however, shall pay, through the Clerk of Courts in Pierre, South Dakota, the \$5.00 statutory filing fee for the above-captioned habeas action.

2. Petitioner's motions, Docs. 6 and 7, for a so-called "4 day writ" are denied.

3. Petitioner's petition for a writ of habeas corpus is denied and this matter is dismissed.

Dated this 26th day of December, 2008.

BY THE COURT:

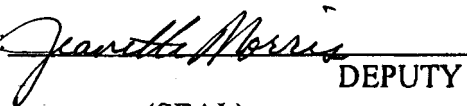


CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY



DEPUTY

(SEAL)